

Message Text

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17 11
ACTION EA-14

INFO OCT-01 ISO-00 CIAE-00 PM-07 H-03 INR-10 L-03 NSAE-00

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R 310834Z OCT 73
FM AMEMBASSY MANILA
TO SECSTATE WASHDC 8898
SECDEF
CSAF (JACI)
NAVY JAG WASHDC
CINCPAC
CINCPACAF
CINCPACREPPHIL
13TH AF
405 CSG

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E.O. 11652: N/A
TAGS: MARR, PGOV, RP
SUBJECT: FILING OF PHIL INCOME TAX RETURNS BY U.S.
CITIZEN EMPLOYEES AT SUBIV AND CLARK

REF: A. MANILA 7624
B. ART. XII, 1947 US/RP MILITARY BASES AGREEMENT

BEGIN SUMMARY: TAX EVASION CASES IN WHICH ELEVEN LONG-TIME
U.S. CITIZEN EMPLOYEES AT SUBIC WERE FOUND GUILTY OF FAILURE
TO FILE PHIL INCOME TAX RETURNS BY OLONGAPO CFI ARE STILL
ON APPEAL TO COURT OF APPEALS. A PRESIDENTIAL DECREE
#213 PROMULGATED PROVISIONS FOR AMNESTY FOR ALL RESIDENT
OR NONRESIDENT ALIENS WHO ARE ENGAGED IN TRADE OR BUSINESS
IN THE PHILIPPINES AND WHO HAVE NOT COMPLIED WITH REQUIRE-
MENT OF PHIL INCOME TAX LAW TO FILE RETURNS. DEADLINE
FOR AMNESTY FILING IS 31 OCTOBER 1973. LOCAL BUREAUS OF
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INTERNAL REVENUE SENT LETTERS TO APPROXIMATELY 70 LONG-TERM

U.S. CITIZEN EMPLOYEES AT CLARK AND SUBIC REFERRING TO ABOVE TAX EVASION CASES AND PRESIDENTIAL DECREE AND ENCOURAGING SUCH PEOPLE TO TAKE ADVANTAGE OF AMNESTY FILING. AS FOR 11 LONG-TERM U.S. EMPLOYEES ALREADY CONVICTED OF FAILURE TO FILE 1969 RETURN, THEIR ATTORNEY HAS INFORMED EMBASSY HE IS ADVISING THEM TO FILE UNDER AMNESTY PROVISIONS. WHILE EMBASSY QUESTIONS THIS ADVICE, OLONGPO 11 HAVE RELIED ON PRIVATE COUNSEL THROUGHOUT THEIR CASE AND DECISION IS BASED ON THEIR PERCEPTION OF THEIR INDIVIDUAL PROBLEMS. EMBASSY HAS HAD CONTINUING DISCUSSIONS WITH DEPT. OF JUSTICE ON LATTER TAX CASES. EMBASSY HAS TAKEN POSITION THAT PROVISION OF MBA CONTROLLING AND THAT INCOME TAX EXEMPTION IMPLIES EXEMPTION FROM FILING RETURN; HOWEVER, EVEN IF EVIDENTIARY BASIS EXISTS FOR SUSPECTING EVASION TAXES ON LOCAL INCOME THE METHOD TO SOLVE PROBLEM DOES NOT LIE IN RESORT TO COURT ACTION BUT RATHER IN GOVT-TO-GOVT NEGOTIATION. EMBASSY RECOMMENDS DIPLOMATIC NOTE TO DFA RESTATING USE'S POSITION. ACTION REQUESTED: DEPARTMENT'S COMMENTS AND/OR CONCURRENCE. END SUMMARY

1. AFTER COURT'S DECISION INVOLVING THE OLONGAPO 11 (REF A) EMBOFFS HAVE HAD CONTINUING DISCUSSION OF SITUATION WITH PHIL JUSTICE OFFICIALS. THEY AGREED THAT ULTIMATELY THIS SUBJECT APPROPRIATE FOR GOVT-TO-GOVT NEGOTIATIONS BUT INDICATED NO URGENT NEED AT PRESENT TIME WHILE CASES STILL BEFORE COURTS. THEY APPRECIATED DILEMMA OF SUBJECT PERSONS IN RELATION TO WHETHER OR NOT TO AVAL THEMSELVES OF THE AMNESTY DECREE BUT INDICATED THAT THIS WAS AN INDIVIDUAL DECISION. THE QUESTION OF THE UNRATIFIED DOUBLE TAXATION TREATY WAS ALSO DISCUSSED AT LENGTH AND SOLICITOR GENERAL STATED HE WOULD ATTEMPT TO DETERMINE STATUS IN GOP.

2. PRESIDENT MARCOS ISSUED DECREE 213 ON JUNE 16, 1973, THAT ALLOWED PERSONS WHO ARE REQUIRED UNDER PHIL INCOME TAX LAW TO FILE RETURN AND WHO HAD FAILED TO DO SO, TO VOLUNTARILY FILE ON PAYMENT OF 10 PESOS (APPROX \$1.50) FOR EACH YEAR, AND IF TAXES OWED, TO VOLUNTARILY PAY ONLY 20 PERCENT OF TAX ORIGINALLY DUE. IF INDIVIDUAL COMPLIED WITH ABOVE CONDITIONS THEY WOULD BE EXEMPT FROM ANY LIABILITY FOR NON-FILING OR FOR NON-PAYMENT OF TAX. DEADLINE IS 31 OCTOBER 1973. DECREE LIMITED OFFICIAL USE

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APPLIES TO (1) EVERY FILIPINO CITIZEN RESIDING IN THE PHILIPPINES OR ABROAD, (2) RESIDENT ALIEN, OR (3) NON-RESIDENT ALIENS "ENGAGED IN TRADE OR BUSINESS IN THE PHILIPPINES" REGARDLESS OF WHETHER DERIVING ANY TAXABLE INCOME FOR YEAR.

3. LOCAL OFFICE OF BIR AT OLONGAPO SENT LETTERS TO LONG-TERM U.S. CITIZEN EMPLOYEES AT SUBIC ADVISING THEM OF THE OLONGAPO 11 CASE, POINTING OUT PRESIDENTIAL DECREE 213 AND

URGING THEM TO AVAIL THEMSELVES OF THE BENEFIT AND TO "ACT NOW BEFORE IT IS TOO LATE." EMBASSY INFORMED THAT APPROXIMATELY 68 SUCH LETTERS ARE KNOWN TO HAVE BEEN DELIVERED TO U.S. CITIZEN EMPLOYEES AT SUBIC AND ONE TO AN EMPLOYEE AT CLARK. IT IS POSSIBLE THAT THERE ARE OTHER LETTERS OF SIMILAR NATURE THAT HAVE NOT BEEN BROUGHT TO ATTENTION OF LOCAL BASE AUTHORITIES, BUT THIS NUMBER ACCORDS GENERALLY WITH TOTAL GOP CONSIDERS "HABITUAL RESIDENTS" OF PHILIPPINES.

4. ATTORNEY FOR OLONGAPO 11 INFORMED EMBASSY THAT HE IS ADVISING HIS CLIENTS WHO HAD BEEN CONVICTED OFFAILED TO FILE PHIL TAX RETURNS FOR THE YEAR 1969 TO TAKE ADVANTAGE OF AMNESTY PROVISIONS AND FILE RETURN FOR THAT YEAR ONLY. HE WILL NOTE ON SUCH FILING THAT IT IS UNDER "PROTEST" AND THAT THEY WAIVE NO RIGHTS THAT MAY ULTIMATELY BE NEGOTIATED BY THE TWO GOVERNMENTS. ATTORNEY ALSO INDICATED THAT BIR HAD AGREED TO ASSIST IN GETTING COURT TO MOOT CONVICTION DUE TO AMNESTY DECREE.

5. EMBASSY HAS NO CONTROL OVER ABOVE ACTION, AND IN ANY EVENT, EMBASSY OPINION IS THAT IT IN NO WAY AFFECTS THE ISSUES INVOLVED, AS SUCH ACTION WILL BE DONE BY INDIVIDUALS ON ADVICE OF THEIR PRIVATELY RETAINED COUNSEL. IN FACT, EMBASSY POSITION IS THAT THE AMNESTY DECREE IS SIMPLY NOT APPLICABLE TO THE SUBJECT U.S. CITIZEN EMPLOYEES AS THEY ARE NOT ENGAGED IN "TRADE OR BUSINESS" IN THE RP. THIS POSITION IS THE ONLY ONE COMPATIBLE WITH THE MBA PROVISIONS AND TO TAKE ANY OTHER POSITION WOULD COMPROMISE USG'S INTERPRETATION OF ART. XII, MBA.

6. EMBASSY INTENDS TO MAINTAIN DIALOGUE WITH JUSTICE DEPT AND REITERATE USG POSITION THAT ART. XII IS INTENDED TO EXEMPT MBA PERSONNEL BOTH FROM FILING AND THE PAYMENT OF LIMITED OFFICIAL USE

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PHIL INCOME TAX. EMBASSY WILL CONTINUE TO POINT OUT THAT IF GOP HAS CHANGED 25-YEAR POSITION AND WILL NOW REQUIRE MBA PERSONNEL OR A SPECIAL CLASS OF SUCH PERSONNEL TO FILE PHIL TAX RETURNS, EVEN IF NOT REQUIRED TO PAY PHIL TAXES, THAT THIS SHOULD BE SUBJECT OF GOVERNMENT-TO-GOVERNMENT NEGOTIATIONS AND NOT ACCOMPLISHED BY UNILATERAL ACTION BY GOP OR ITS AGENCIES.

7. IN THIS REGARD, UNLESS DEPT DIRECTS OTHERWISE, EMBASSY NOW BELIEVES IT APPROPRIATE AND INTENDS TO CONVEY USG CONCERN OVER RECENT EVENTS AND OUR POSITION TO GOP IN DIPLOMATIC NOTE SO THAT A CLEAR OFFICIAL FOUNDATION CAN BE LAID IN EVENT FORMAL DISCUSSIONS BECOME NECESSARY. REQUEST DEPARTMENT'S COMMENTS AND/OR CONCURRENCE.

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